

Public Hearing Questions for  
**Judicial Nominating Commission**  
Created by Section 17-4-102, *Tennessee Code Annotated*  
(Sunset termination June 30, 2012)

**1. Provide a brief introduction to the commission including information about its purpose, statutory duties, staff, and administrative attachment.**

A non-partisan, merit selection system for appellate judges has been used continuously in Tennessee since 1971 (*See* 1971 Tenn. Pub. Acts 510, Act of May 10, 1971, ch. 198). During that time, Tennessee has had three Democratic Governors and four Republican Governors. The system has worked well for forty (40) years.

The Judicial Nominating Commission was created on July 1, 2009 by Tenn. Code Ann. § 17-4-102. It succeeded and assumed the responsibilities of the Judicial Selection Commission which was terminated on June 30, 2009. The Commission accepts applications from persons interested in filling judicial vacancies on the Supreme Court, the Court of Appeals, the Court of Criminal Appeals and all state trial courts, examines the qualifications of candidates through the applications, public hearings and personal interviews, and sends the three most qualified candidates to the Governor for appointment to fill the vacancy.

In 2009, the Tennessee General Assembly adopted the Tenn. Code Ann. § 17-4-101, restating the purpose and intent of the Tennessee Plan of merit selection.

It is the declared purpose and intent of the general assembly by the passage of this chapter to:

- (1) Assist the governor in finding and appointing the best qualified persons available for service on the appellate courts of this state, and to assist the electorate of this state in electing the best qualified persons to the courts;
- (2) Better insulate the judges of the courts from political influence and pressure;
- (3) Improve the administration of justice;
- (4) Enhance the prestige of and respect for the courts by minimizing the necessity of political activities by appellate judges; and
- (5) Make the courts less political.

Tenn. Code Ann. § 17-4-101. The public policy goals embodied in the statement of purpose and intent are, indeed, furthered by the merit selection plan described in the statutory scheme, the Tennessee Plan.

Since the Tennessee Plan was originally adopted in 1994, there have been ninety-five (95) judicial appointments under the system, including eight (8) Supreme Court members. At the time of the drafting of this response, there is one pending vacancy on the Court of Criminal Appeals, for which the Judicial Nominating Commission has submitted a panel of nominees to the Governor. It should be noted that some form of merit selection of judges is currently used in thirty-three (33) states.

Staff of the Administrative Office of the Courts attends all Commission meetings and prepares documents relating to and necessary for each meeting. Pursuant to statutory authority,

The administrative office of the courts shall keep and maintain all records of the judicial nominating commission as well as furnishing the commission with any other secretarial or clerical services or assistance it may require. It is further the duty of the administrative office of the courts to notify all commission members of the date, time and place of any commission meetings.

Tenn. Code Ann. § 17-4-117.

Each applicant for a judicial vacancy is offered the opportunity to have up to three (3) speakers at a public hearing to speak in his or her behalf. Upon the conclusion of the scheduled speakers, the Commission allows an opportunity for persons who may be present who wish to speak against any applicant. At the conclusion of any such speakers, the public hearing is closed, whereupon the Commission conducts public interviews with each candidate. After interviews, the Commission deliberates and commences the process of voting by unsigned ballot in rounds until three nominees receive a number of votes equaling the majority of the total membership of the Commission. This process must occur within sixty (60) days after receiving notice from the Governor that a vacancy has occurred.

The Commission requires that all applicants complete a detailed application. The applicants are evaluated on the basis of several criteria, including, integrity, impartiality, industry, legal knowledge and ability, judicial temperament, financial responsibility and public service.

The Commission receives information on complaints filed against each applicant from the Court of the Judiciary, if applicable, and the Board of Professional Responsibility. The Commission invites, but does not require, letters of support or objection from any interested person.

- 2. Provide a list of current members of the commission and describe how membership complies with Section 17-4-102, *Tennessee Code Annotated*. Who appoints members? Are there any vacancies on the commission? If so, what steps have been taken to fill the vacancies?**

Please see current membership list attached.

There are currently no vacancies on the commission.

Pursuant to T.C.A. 17-4-102 the Commission consist of seventeen (17) members. Eight (8) members are appointed by the Speaker of the Senate. Two (2) of the members from each of the state's three grand divisions, and the remaining two (2) members to be appointed at-large.

Eight (8) members are appointed by the Speaker of the House with the same grand division requirements described above.

One (1) non-attorney member is appointed at-large by joint action of the Speaker of the Senate and Speaker of the House.

It should be noted that no more than three (3) members appointed at-large may reside in the same grand division. *T.C.A.17-4-102 (a)*

**3. Does the commission's membership include female members? Members of a racial minority? Members who are 60 years of age or older?**

The Commission's current membership includes five (5) females and twelve (12) males. Two (2) Commission members are members of racial minority. Three (3) members are 60 years of age or older.

**4. How many times did the commission meet in fiscal years 2010 and 2011? How many members were present at each meeting?**

The Commission met six (6) times during 2009/2010 fiscal year. The Commission met four (4) times during 2010/2011 fiscal year. The number of person attending each meeting is as follows.

September 23, 2009 –sixteen (16) members present  
October 16, 2009 – thirteen (13) members present  
October 28, 2009 –twelve (12) members present  
December 19, 2009 – twelve (12) members present  
January 29, 2010 – fifteen (15) members present  
March 8, 2011 – fifteen (15) members present  
April 4, 2011 – thirteen (13) members present  
April 26, 2011 – seventeen (17) members present  
June 6, 2011 – fourteen (14) members present

**5. What per diem or travel reimbursement do commission members receive? How much was paid to members during fiscal years 2010 and 2011? What were the commission's total revenues (by source) and expenditures (by object) during the same period?**

Expenses for FY 2010 were:

Travel	\$17,604.61
Professional Services	\$ 397.36
Supplies	<u>\$ 226.11</u>
Total	\$18,228.08

Expenses for FY 2011 were

Travel	\$ 9,805.37
Professional Services	\$ 1,976.41
Supplies	<u>\$ 1,123.27</u>
Total	\$12,906.36

There were no revenue collections either year.

Reimbursable lodging expenses are reimbursed at the single occupancy room rate or the approved conference room rate. Mileage is reimbursed at the current state rate. Reimbursement for in-state meals and incidentals is in accordance with the CONUS rates for Tennessee.

- 6. Is the commission subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the commission have for informing the public of its meetings and making its minutes available to the public?**

The Commission is subject to Sunshine law requirements. Notification of all meetings are transmitted through postings on the AOC website (<http://www.tncourts.gov>) and distributed to the media through the AOC's public information officer.

- 7. Describe the nature and extent of the commission's activities and any major accomplishments for the past two years. For how many vacancies did the commission select nominees during that period? How many, if any, vacancies remain requiring nominees?**

The Commission spent numerous hours reviewing application, conducting public hearings and interviews for the forty-eight (48) applicants who applied during the 2009/2010, 2010/2011 fiscal years. The Commission met six (6)\* times and sent five (5) nomination panels to the Governor.\* The five (5) panels sent to the Governor resulted in appointments on the 30<sup>th</sup> Judicial District Criminal court, 5<sup>th</sup> Judicial District Circuit Court, 6<sup>th</sup> Judicial District Criminal Court and the Court of Criminal Appeals. One vacancy was won by election prior to appointment and one vacancy is still pending the Governor's appointment.

\*One meeting resulted in a panel containing only two (2) applicants. The Governor requested the Commission reopen the process to accept additional application to achieve a full panel of three nominees for this vacancy.

- 8. Does the commission have policies in place to address potential conflicts of interest by commission members or those acting as staff to the commission?**

The Judicial Nominating Commission By-Laws include a section on ethical considerations. This section states:

"A commissioner shall disclose to other Commission members any personal and business relationships with an applicant that may directly or indirectly influence the decision of the Commission Member. It is anticipated that Commission Member will know, or have information about, many of the applicants. Often a Commission Member will have worked with, or against, one or more of the applicants in legal, business or civic matters. This assists, and is intended as a part of, this nomination process. It does not disqualify a

Commission member from taking part in the hearings or voting. A Commission member should disqualify him or herself from the appropriate portion of the consideration or the voting where the Commission member believes that because of prior information, or relationships, the commissioner will not be able to fairly consider all of the applicants.”

**9. Briefly describe the commission’s process for selecting nominees for judicial vacancies. What criteria are considered? What types of independent investigations or inquiries does the commission conduct?**

When a vacancy occurs at the appellate or trial court level, the Commission receives applications and meets to hear testimony in support of or objecting to the candidates. Each candidate is offered the opportunity to have three (3) individuals to speak on their behalf. An opportunity for those persons wishing to object to a candidate is also provided at the public hearing. The Commission then interviews the candidates, deliberates and submits the names of three (3) candidates to the Governor, who then makes the appointment. This process must take place within sixty (60) days after receiving notice from the Governor that a vacancy has occurred.

The Commission requires all applicants to complete an extensive application form. The applicants are evaluated on the basis of several criteria; integrity, impartiality, industry, legal knowledge and ability, judicial temperament, financial responsibility, and public service.

The Commission receives investigatory information about each applicant from the following agencies: Court of the Judiciary, (when applicable), and Board of Professional Responsibility. The Commission invites, but does not require, letters of support or objection from any interested person.

**10. What complaints, if any, have been received in the past two years regarding the commission’s actions? How have these complaints been resolved?**

None

**11. Describe any items related to the commission that require legislative attention and your proposed legislative changes.**

None

**12. Should the commission be continued? Should it be continued in its current form? To what extent and in what ways would the absence of the commission affect the public health, safety, and welfare?**

The Judicial Nominating Commission should be continued. The Commission is an integral part to the merit selection process of filling judicial vacancies. The work of the Commission lends improvement to the administration of justice by independently evaluation judicial applicants for the competencies and abilities that are required of all judges. Further, the

Commission provides the public access point for the voicing of recommendation or opposition to judicial applicants. For these reasons, the Judicial Nominating Commission should be continued.

**13. Please list all commission programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.**

**[Federal financial assistance includes:**

- (1) Grants and loans of Federal funds,**
- (2) The grant or donation of Federal Property and interests in property,**
- (3) The detail of Federal personnel,**
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and**
- (5) Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.**

**28 C.F.R. Sec. 42.102(c)]**

**[The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.**

**28 C.F.R. Sec. 42.102(f)]**

***If the commission does receive federal assistance, please answer questions 14 through 21. If the commission does not receive federal assistance, proceed directly to question 20.***

None

**20. Please provide a breakdown of current commission staff by title, ethnicity, and gender.**

Elizabeth A. "Libby" Sykes  
Director  
Administrative Office of the Courts  
Caucasian  
Female

Aaron Conklin  
Assistant General Counsel  
Administrative Office of the Courts  
Caucasian  
Male

Debbie Hayes  
Executive Administrative Assistant  
Administrative Office of the Courts  
Caucasian  
Female

**21. Please list all commission contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.**

None

# Judicial Nominating Commission

**T.C.A. § 17-4-102**

**Chair: Mary Helen Beard, Esq.**

**Vice Chair: Tom Lawless, Esq.**

**Secretary: Christopher Clem, Esq.**

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